

BRENDA F. SANDUSKY,)
)
 Plaintiff/Appellee,)
)
 VS.)
)
 DANNY J. SANDUSKY,)
)
 Defendant/Appellant.)

Appeal No.
01-A-01-9605-CH-00209

Wayne Chancery
No. 7900

FILED

December 20, 1996

Cecil W. Crowson
Appellate Court Clerk

COURT OF APPEALS OF TENNESSEE
MIDDLE SECTION AT NASHVILLE

APPEALED FROM THE CHANCERY COURT OF WAYNE COUNTY
AT WAYNESBORO, TENNESSEE

THE HONORABLE JIM T. HAMILTON, JUDGE

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AFFIRMED AND REMANDED

BEN H. CANTRELL, JUDGE

CONCUR:
TODD, P.J., M.S.
LEWIS, J.

OPINION

This post-divorce proceeding involves questions of the child support arrearages due under a marital dissolution agreement, the father's income for purposes of setting the amount of child support, whether the husband is due reimbursement for an income tax payment, and whether the wife is entitled to attorneys fees. We affirm the decision of the trial judge.

I.

In a 1988 divorce the parties executed a marital dissolution agreement which the court incorporated in the divorce decree. The agreement gave the husband all the stock in his business, Sandusky Trucking Company, gave the wife custody of the parties' two children, and provided for child support as follows:

15. The husband agrees that he pay all the expenses associated with the reasonable comfort, support, maintenance, health and education of each of the parties [sic] children until each of the said Children reaches the age of eighteen (18) years of age or sooner dies. The Wife will provide the husband with copies of receipts, invoices, cancelled checks, or statements evidencing expenditures made as obligations incurred by the Wife on behalf of each child or both Children

In addition the agreement provided that the parties would be jointly liable for any potential tax liability that arose during the marriage.

In January of 1994 Mrs. Sandusky filed a petition for contempt and modification of the divorce decree, alleging that the husband had failed to reimburse her for over \$15,000 in reasonable child care expenses. After a hearing the court ordered Mr. Sandusky to reimburse Mrs. Sandusky \$10,000 in back child support, set future child support at \$2,667.67 per month, and dismissed the husband's claim that the wife owed anything on a back tax liability. The court also ordered the husband to pay \$6,614.90 toward the wife's attorney's fees.

II.

Mr. Sandusky contends that the trial judge erred in finding a \$10,000 arrearage in child support. In his brief and at oral argument he argued that the provision for child support in the marital dissolution agreement should be construed against the wife and that the expenses proved by the wife were not reasonable or necessary. He cites familiar authorities to the effect that a contract should be construed most strongly against the one who drew it.

We fail to see, however, how that rule is invoked in this case. The parties' agreement simply provided that the father would "pay all the expenses associated with the reasonable comfort, support, maintenance, health, and education" of his children. The only interpretation required is whether the various expenses incurred by the mother were reasonable.

With respect to the reasonableness question, the husband's brief is not specific about which of the billed charges he considered unreasonable. There is some testimony in the record about vacation trips to Hawaii and the Bahamas, but the brief does not specify the amount or cite where in the record the amounts may be found. Even if we were to disallow the vacation costs, however, the record does show that the trial judge also disallowed \$5,287.83 of the amount claimed by the wife. Whether that disallowance corresponds to any of the charges the husband claims to be unreasonable does not appear in the record. We are persuaded, therefore, that the husband has failed to show how the evidence preponderates against the trial judge's finding of a \$10,000 arrearage in child support.

III.

The marital dissolution agreement also provided that each party would be responsible for one-half of any back taxes that accrued during the marriage. Mr. Sandusky claims that Mrs. Sandusky still owes a certain amount for her half of the back taxes. Mrs. Sandusky says she paid what he asked her to pay.

The trial judge found that Mrs. Sandusky had “paid to the defendant all portions of the Federal income taxes that were due to be paid by her.” We do not think the evidence preponderates against that finding. Again, we are handicapped by the fact that the evidence in the record is not specific about how much of the back taxes paid by Mr. Sandusky relate to the years when the parties were married. Mrs. Sandusky testified that she paid \$8,798.50 once and one half of \$13,795 another time. Based on this record we cannot say that she owes anything else.

IV.

In calculating the amount of child support Mr. Sandusky should pay, the trial judge included the income of Sandusky Trucking Company, which Mr. Sandusky had allegedly sold to his father. Mr. Sandusky contends that the sale was a bona fide transaction.

The proof showed that the corporation was awarded to Mr. Sandusky in the division of the marital property at the time of the divorce. Shortly after receiving a letter from Mrs. Sandusky’s lawyer demanding payment of the amounts claimed as child support, Mr. Sandusky transferred his interest to his father for \$1,000 and the assumption of the corporate debts. He explained the transfer as an attempt to shield himself from any liability that might arise from the corporate operation.

The evidence showed that the corporation had a substantial net worth. In a pre-nuptial agreement signed in 1990 Mr. Sandusky listed the worth of the

corporation at \$329,193. The 1992 tax return showed the stockholder equity to be \$545,596. The corporation had consistently paid Mr. Sandusky a salary of \$40,000 to \$50,000 each year, and in 1992 it reported a taxable income of \$83,810.

A conveyance made under such circumstances and on such inadequate consideration would be considered void as to Mr. Sandusky's creditors. See Tenn. Code Ann. § 66-3-101; *Bowery v. Vines*, 178 Tenn. 98, 156 S.W.2d 395 (1941). We know of no reason why a different rule should apply where the one attacking the conveyance does so on behalf of the transferor's children rather than his creditors. While we do not set the transaction aside (Mr. Sandusky's father was not a party to this action), we think the trial judge was justified in attributing the corporation's income to Mr. Sandusky. See *Myers v. Myers*, No. 03-A-01-9411-GS-00395 (Tenn. App. 1995).

V.

Finally, Mr. Sandusky attacks the trial court's award of fees to Mrs. Sandusky's attorneys. In Tenn. Code Ann. § 36-5-103(c) the legislature gave the courts the authority to award reasonable attorney's fees to a plaintiff spouse who sues to enforce a decree for child support. The amount of the award is within the court's discretion and the ability of the petitioning spouse to pay is not the controlling consideration. See *Sherrod v. Wix*, 849 S.W.2d 780 (Tenn. App. 1992). We think the fees awarded were reasonable.

The lower court's judgment is affirmed in all respects and the cause is remanded to the Chancery Court of Wayne County for any further proceedings that may become necessary. Tax the costs on appeal to the appellant.

BEN H. CANTRELL, JUDGE

CONCUR:

HENRY F. TODD, PRESIDING JUDGE
MIDDLE SECTION

SAMUEL L. LEWIS, JUDGE

